

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:)	CHAPTER 7
)	
ANGELA K. WELCH)	CASE NO. 03-62351
)	
Debtor)	

)	
ANGELA K. WELCH)	
)	
Plaintiff)	
v.)	ADVERSARY PROCEEDING
)	NO. 03-06209
KENTUCKY HIGHER EDUCATION)	
AUTHORITY)	
)	
Defendant)	

**ORDER DENYING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT,
GRANTING PLAINTIFF’S MOTION TO ENFORCE SETTLEMENT AND
DENYING DEFENDANT’S MOTION FOR SANCTIONS**

Before the court is Defendant’s Motion for Summary Judgment, Plaintiff’s Motion to Enforce Settlement, and Defendant’s motion for sanctions. Debtor filed this adversary proceeding seeking a determination that a portion of her education loan obligation was dischargeable. The facts of this adversary proceeding are somewhat unusual.

Prepetition, Debtor obtained student loans totaling approximately \$37,000. Debtor’s now-former husband obtained student loans totaling approximately \$31,000. In April or May, 2001, Debtor and her then-husband applied to Regions Bank Student Loan Center for a Joint Spousal Consolidation Loan (the “Joint Obligation”). Defendant guaranteed that loan and is now the holder of the claim evidenced by the Joint Obligation. The agreement in connection with the

Joint Obligation provided that Debtor and her husband were jointly and severally liable for the entire amount of the Joint Obligation. Defendant sets forth in its Statement of Undisputed Material Facts that Debtor's portion of the Joint Obligation represents 54.58% of the Joint Obligation. Debtor and her husband divorced in October 2002. Debtor filed her Chapter 7 bankruptcy petition February 13, 2003. Debtor asserts in the complaint that only the portion of Defendant's claim arising from her own student loan obligations are nondischargeable under §523(a)(8).

Plaintiff alleges that the attorneys for the parties engaged in settlement discussion and reached an agreement that the parties would execute a consent order that would provide that the student loans borrowed by Debtor were nondischargeable, but the student loans borrowed by Debtor's former spouse, Joseph Edgeworth, are dischargeable as to Debtor. The attorneys were unable to agree upon a specific amount for the portion of the Joint Obligation that represented Debtor's student loans. Plaintiff contends the settlement is evidenced by an exchange of letters between counsel for the parties. By letter dated April 23, 2004, Defendant's attorney stated:

[M]y client is prepared to entertain a resolution of this Adversary Proceeding wherein the Plaintiff would repay the percentage of the consolidated loan representing her previously individually held student loan....If this is an option your client wishes to consider, please obtain and provide a proposed payment schedule, which I in turn can present to [Defendant]. I am reasonably certain that [Defendant] will entertain any reasonable offer of settlement, for (sic) so long as that settlement is accompanied by a dismissal of the pending Adversary Proceeding.

By letter transmitted April 28, 2004, Debtor's attorney stated:

My client is in a position to commence immediate monthly repayment of her share of the loan. This will also be accompanied by a dismissal of the Adversary Proceeding.

By letter dated April 30, 2004, Defendant's attorney presented several repayment options and concluded with the following statement:

After you review the enclosed with your client, please let me know which of the payment options she has selected. At that time, I will obtain specific remittance information which will allow your client to make monthly payments on her student loan immediately.

CONCLUSIONS OF LAW

In general, "the law of contracts governs the construction and enforcement of settlement agreements." *Blum v. Morgan Guaranty Trust Co. Of New York*, 709 F.2d 1463 (11th Cir. 1983). An attorney of record is the client's agent in pursuing a cause of action and under Georgia law "an act of an agent within the scope of his apparent authority binds his principal." *Glazer v. J.C. Bradford and Co.*, 616 F.2d 167, 168 (5th Cir. 1980). The client is therefore bound by his attorney's agreement to settle the lawsuit, even though the attorney may not have had express authority to settle. The three letters, quoted above, constitute an offer and an acceptance and sufficiently set forth the terms of the agreement to constitute a binding settlement. This adversary proceeding is a proceeding to determine the dischargeability of Defendant's claim and the parties reached an unambiguous agreement to settle that issue. The absence of an agreement regarding the specific amount of Plaintiff's payments does not preclude a conclusion that the parties have settled this adversary proceeding. Defendant has since stated as an undisputed fact in its motion for summary judgment that Plaintiff's student loans represent 54.58% of the Joint Obligation. Therefore, the amount of Plaintiff's payments is subject to a relatively simple arithmetic computation. In light of this conclusion, Defendant's motion for summary judgment and motion for sanctions will be denied. Accordingly, it is hereby

ORDERED that Plaintiff's motion to enforce settlement agreement is granted.

Defendant is bound by the Settlement Agreement that Defendant's claim against Plaintiff, to the extent it exceeds her own prior educational loans, is DISCHARGED. Plaintiff's request for attorneys fees is denied. It is further

ORDERED that Defendant's Motion for Summary Judgment and Request for Sanctions are denied.

IT IS SO ORDERED this _____ day of February, 2005.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE